



**NATIONAL OPEN UNIVERSITY OF  
NGERIA**

**SCHOOL OF LAW**

**COURSE CODE:LAW 100**

**COURSE TITLE:INTRODUCTION TO LAW**

### 3.1.4 Growth of Federal Power

It would be misleading to list the powers of the Federal Government as enshrined in the 1990 Constitution without a discussion of the change in the balance of power between the Federal and Regional/State Governments since that time.

It is often said that the founding fathers of Nigerian Federation would be mortified if they were alive today to witness the vast expansion in Federal Government power. They would be aghast to learn that the Federal Government exercises power in relation to such matters as education, roads, health to name but three areas traditionally considered the province of the Regions.

How has this change come about? A number of factors are important:

1. The most significant reason for the growth of Federal power has been the manner in which the Constitution has been drafted and then interpreted by the Supreme Court of Nigeria. This process is a complex one and a study in itself.

Sometimes, the Courts have moved away from a legalistic approach to a more liberal, sociological approach, presenting the constitution not as a static document but one which must be interpreted to take into account changes in the political, economic and social structure of Nigeria. At other times, the Supreme Court is utterly legalistic.

- The court has conferred on the Federal Government, responsibility for raising income tax to the exclusion of the States thereby gaining control of the purse strings. The Nigerian press ensures that their readers and listeners are familiar with perennial problem of revenue allocation and states share of the fiscal cake.
  - Creation of Local Government is another. A number of states especially Lagos state, took the Federal Government to Court on the matter.
2. Changes to the Constitution itself. As many will be aware, the Constitution lays down a procedure for change to its provisions which in essence requires the alteration to be approved at a referendum of all of the citizens of Nigeria. Clearly this avenue for change has not been significant because the constitution has not been amended at any time.
  3. Huge inroads into State power by the Federal Government have occurred by the use of the Grants power in the Constitution.

Under this power, the Federal Government can make grants to States for specific purposes. So the Federal government makes grants to the States for particular purposes and thereby can determine policy in that area. In this way the Federal Government is affecting policy in Education – normally regarded as a State matter. You can see that holding the Federal Government purse strings through income tax levies and Petroleum Funds and Oil Revenue, as well as the concurrent use of the grants power, have substantially re-shaped the extent of central power.

There are numerous economic, political, and social reasons which favour the centralization of power and which have assisted the process described above. A consideration of these factors is outside the scope of this course but one matter which should be noted is that on occasions, the States have voluntarily yielded up their power to the Federal Government.

### **3.1.5 Local Government**

There is a third level of government in Nigeria and that is referred to as the local government. These are the elected bodies who are responsible for the good governance of a particular geographical area within the State. They are not independent law making units and most of their laws or by-laws are subject to approval of the State government or its representative.

The type of laws local governments pass are usually classified as subordinate or delegated legislation.

### **SELF ASSESSMENT EXERCISE 2**

- 1(a). List five areas of power that you would now expect to be exercised only by the National Assembly.
- (b). Where does the National Assembly get its authority to exercise those powers.
  
- 2(a). List five areas of power vested exclusively in the State Assembly.
- (b). Where does the State Assembly get its authority to exercise those powers?
- (c). Give 2 examples of concurrent legislature powers in our federal system and indicate what happens of the National Assembly's "cover the field" in the area of concurrent power.

## **3.2 Executive**

In the Colonial times, the executive function of government (as well as legislative and judicial to an extent) was vested in the Crown. The King administered the laws as well as exercising powers as to proponent of laws and arbitrator on disputes under the law. Gradually, legislative power became vested in the King-in-Parliament and the courts achieved independence from the Crown. Subsequently on attainment of Republican Status, the ultimate executive function of government in the Federal sphere is vested, by the Constitution, in the President. However, the Constitution goes on to provide that this is exercisable by the Federal Executive Council.

There are two strands to the Executive:

- responsible government; and
- statutory bodies and offices.

The Prime Minister (prior to 1963) and President since 1963 is at the head of **Responsible Government**. In the exercise of statutory powers, the convention has arisen that the Prime Minister or the President acts on the Government's advice. This convention however is not always followed.

In its executive capacity, the democratic government prior to 1963 has two forms:

- Cabinet – the less formal body which makes policy decisions; and
- Executive Council – the formal body meeting with the Prime Minister and advising the Prime Minister of cabinet's decision upon which the Prime Minister usually acts to implement those decisions requiring the exercise of his prerogative or statutory powers.

These two bodies are made up of the Ministers who head the government departments staffed by public servants, whose function in theory is to obey the Minister and advise when required. In practice of course, administration of the laws is largely carried out by this public sector.

The 'responsible' aspect of government arises from the convention that the Minister in charge of a government department is responsible for the actions of a public servant, even though the Minister may have no specific knowledge of the matter. The public servant largely remains anonymous. Relevant also to the functioning of this aspect of government is the convention that cabinet operates as a body, and once policy has been decided, the individual Ministers are bound by that decision. If in all conscience they cannot abide by the decision, they must resign.

The Presidential System of government commenced on October 1, 1963. the office of Governor General (Head of State) and of the Prime Minister (head of Government) became united in the Presidency.

Under the present constitution, the powers of government are shared among the Legislative, Executive and the Judiciary. The executive power is vested in the President and may exercise his power, where appropriate, directly or through the Vice President, Ministers or other public officers.

The other strand of the Executive is made up of the **statutory bodies** set up to do specialized tasks, e.g. Nigeria Broadcasting Corporation, Railway Corporation, Power Holding Company of Nigeria, and **statutory offices**, such as the Ombudsman. The function of the Executive is to decide upon policy and to carry out those policy decisions and perform ancillary functions.

#### **4.0 CONCLUSION**

There are three tiers of government – Federal, State and Local Government. Each government has defined powers to legislate. Functions of government are also shared into executive (Federal), Concurrent (States and Federal) with the Residue resting on the states. The extension has two strands: responsible government and statutory bodies and offices.

#### **5.0 SUMMARY**

Legislative powers are shared among the tiers or levels of governments (local Government, State and Federal) and its functions among its organs (legislative, executive and judicial). In a democratic dispensation the Executive has two strands (responsible government and statutory bodies and offices).

#### **6.0 TUTOR-MARKED ASSIGNMENT**

1. Compare the scope of the rule of Prime Minister and Governor General before 30 Sept. 1963 and that of the President since 1<sup>st</sup> Oct. 1963.
2. Distinguish the ‘Cabinet from the Executive Council.

#### **7.0 REFERENCES/FURTHER READINGS**

Solomon D. (1975). *Australia's Government and Parliament*. West Melbourne: Nelson.

FGN. (1999). *Constitution of Federal Republic of Nigeria*.

**UNIT4 THE NIGERIAN LEGAL SYSTEM:  
ADMINISTRATION AND ENFORCEMENT OF  
LAW**

**CONTENTS**

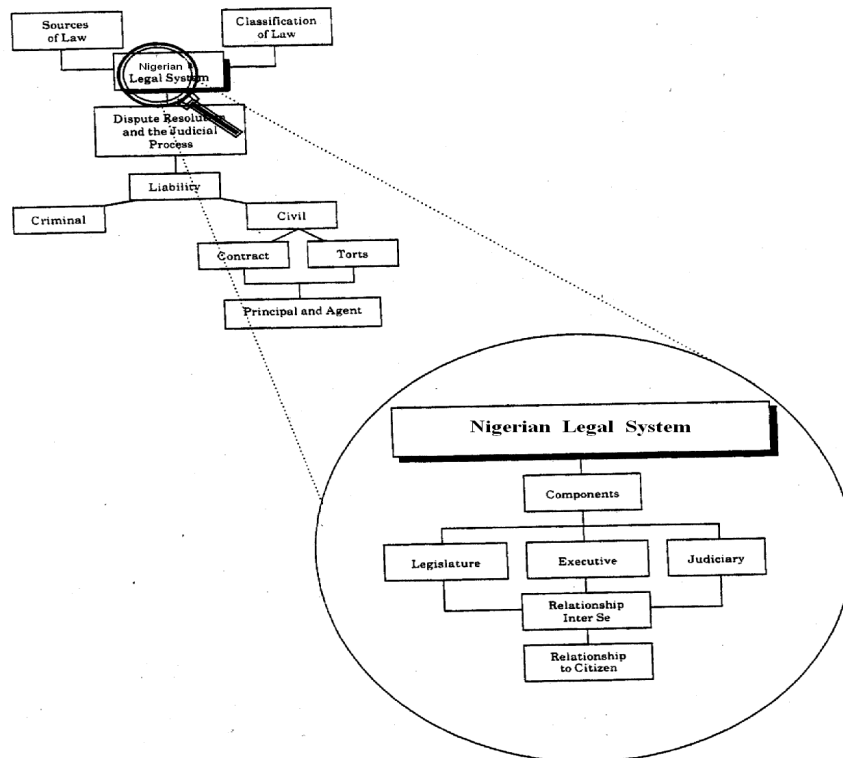
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## **1.0 INTRODUCTION**

The various arms of government exercise different powers and also play different roles in the process of enacting, administering and enforcing laws and this forms the theme of this unit. But first let us refresh our memories with an over-view of the Legal System.

### **The Nigerian Legal System: Overview**



## 2.0 OBJECTIVES

At the successful completion of this unit, you should be able to:

- describe in broad terms the jurisdictions of major courts within the federal and the state judicial hierarchies
- describe the role of lawyers, within the Nigerian legal system
- identify some of the issues currently affecting the profession and proffer solutions.

## 3.0 MAIN CONTENT

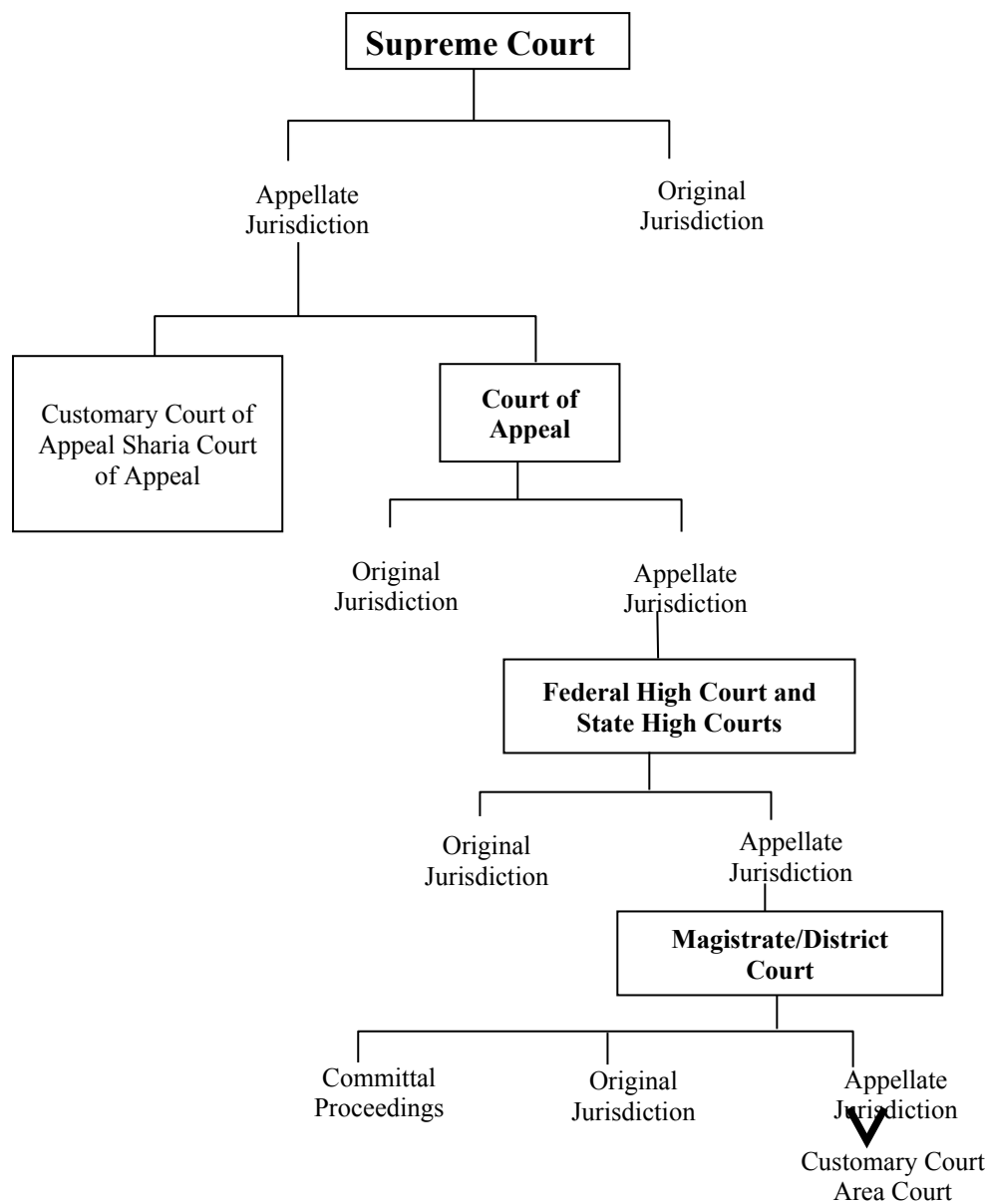
### 3.1 Judiciary

The Judiciary interprets and applies the laws through the court system. The courts of major importance in Nigeria in ascending order of authority are:

- Magistrates Court/District Court
- High Court
- Court of Appeal
- Supreme Court



Below is a diagrammatic representation of the structure of these courts setting out for each court its jurisdiction, type of cases heard and the composition of the bench. You should study the diagram carefully.



(The above diagram is a general guide only. Not all Courts are mentioned)

Notice that each court in the hierarchy has both original and appellate jurisdiction.

### SELF ASSESSMENT EXERCISE 1

Discuss the original and appellate jurisdiction of the Court of Appeal.

### **3.1.1 Jurisdiction**

A court's jurisdiction refers to the matters, which it has authority to hear.

#### **(a) Geographical**

One aspect of the limits of a court's jurisdiction is the geographical area over which the judgment of the court will have effect. Clearly the decisions of the Supreme Court of Nigeria do not have effect outside the borders of Nigeria.

#### **(b) Original and Appellate**

Original jurisdiction refers to matters which can be commenced or originate in that court; while Appellate jurisdiction concerns cases which come on appeal to that court from another court.

#### **(c) Criminal and Civil**

A court's jurisdiction can also be defined by looking at its criminal and civil jurisdiction (i.e. matters arising under criminal law or not). The jurisdiction in criminal proceedings is determined by the sentence which can be imposed by the court in question. With civil proceedings, the monetary limit, i.e. the amount which can be claimed or contested, is the deciding factor.

#### **(d) Federal and State**

Yet another description of matters which a court may hear is by reference to its State and Federal jurisdiction. This describes matters arising either under State law (e.g. prosecution in the Magistrate Court under State Road Traffic legislation) or Federal law (e.g. maintenance proceedings in the Magistrate Court exercising jurisdiction under the Matrimonial Causes Act).

#### **(e) Cross Vesting Legislation Found Invalid**

Our federal system and the division of power between the states and the federation have caused great inconvenience at the court level.

The difficulty was that often it was logical for state courts to exercise some of those federal powers and conversely for Federal Courts to exercise some powers which ordinarily fell to state courts. A good example of the problems lies in the Trade Practices field. Suppose a plaintiff wanted to sue for breach of contract and allege a failure to

comply with state Sale of Goods legislation, this would ordinarily be a matter for the state High Courts. However, if the plaintiff wanted to allege a breach of the *Trade Practices Act*, they could not do so because that was a Federal High Court matter. Similarly, there were problems at the family law level relating to children born within wedlock. If a family comprised children born in wedlock, and also outside it, then custody would have to be determined by two separate courts.

The thrust of the scheme was to confer on the main courts in each hierarchy the general civil jurisdiction of the other courts in the scheme. That is, a State High Court may deal with a contract law issue before it and also any breaches of the *Trade Practices Act 1974 (Cth)* alleged as part of the claim.

This was an eminently sensible scheme but see the decision of *Re Wakim* <[http://www.austlii.edu.au/au/cases/cth/high\\_ct/1999/27.html](http://www.austlii.edu.au/au/cases/cth/high_ct/1999/27.html)>. The Constitution prevented the State Assembly from conferring state jurisdiction on the Federal Courts. The reverse that is National Assembly vesting State courts with Federal jurisdiction may be valid.

### 3.2 Federal Court Hierarchy

The major courts with federal jurisdiction which we shall look at are the Supreme Court, Court of Appeal and Federal High Court. There are other federal courts, such as Customary Court of Appeal and Sharia Court of Appeal.

NAME Jurisdiction	SUPREME COURT OF NIGERIA			
	ORIGINAL		APPELLATE	
	CRIMINAL	CIVIL	CRIMINAL	CIVIL
Type of Case Heard	No Jurisdiction CFRN. 1990 Sec. 232	CFRN. 1990; Sec. 232	Sec. 233(1), 2(a) (b) (c) (d) (f) 2(3)- (6)	Appeals from the Court of Appeal CFRN. 1990; Sec. 233(1)- (6)
Presiding	5 or 7 Justices	5 or 7 Justices	5 or 7 Justices	5 or 7 Justices

<u><b>NAME</b></u> Jurisdiction	<b>COURT OF APPEAL</b>			
	<b>ORIGINAL</b>		<b>APPELLATE</b>	
	<b>CRIMINAL</b>	<b>CIVIL</b>	<b>CRIMINAL</b>	<b>CIVIL</b>
Type of Case Heard	No Jurisdiction	CFRN. 1990; Sec. 239	CFRN. 1990; Sec. 240-248	CFRN. 1990; Sec. 240, 248
Presiding	3 Justices	3 Justices	3 Justices	3 Justices

(CFRN means The Constitution of the Federal Republic of Nigeria), 1990

<u><b>NAME</b></u> Jurisdiction	<b>FEDERAL HIGH COURT</b>		
	<b>ORIGINAL</b>		<b>APPELLATE</b>
	<b>CRIMINAL</b>	<b>CIVIL</b>	
Type of Case Heard	CFRN. 1990; Sec. 251(S) 251 (2), (3)	Unlimited (in Amount and includes Equitable Jurisdiction) CFRN. 1990 Sec. 251	No appellate jurisdiction (civil or criminal)
Presiding	1 Justice	1 Justice	1 Justice

\* Jury is unknown to the modern Nigeria legal system.

### **3.3 The Courts**

#### **3.3.1 Magistrate Courts**

Magistrate Courts are at the bottom of the judicial hierarchy. Magistrate Courts in the Southern States have both civil and criminal jurisdiction. A Magistrate Court hears only criminal matters in the Northern States. Civil matters are heard in the District Courts. The Magistrates are normally appointed from within the public service, usually the Justices Department, although the numbers appointed from private practice are increasing.